



May 12, 2025

California State Assembly
State Capitol 1315 10th Street
Sacramento, CA 95814

Re: Assembly Bill 446: Surveillance Pricing - Support

Dear Honorable Assemblymembers,

Consumer Reports¹ writes in support of AB 446. This bill is focused on a pocketbook issue that is an immense source of frustration for consumers: surveillance pricing. Surveillance pricing, also sometimes referred to as “personalized” pricing, is when a company uses personal data that they’ve gathered about a consumer—like data about their online search history, or inferences about family structure, health conditions, or income—to set the price of a product offered to a consumer. Consumer Reports has heard from our members, 175,000 of whom live in California, about their frustrations with opaque pricing tactics. Nationally representative polling shows that consumers are opposed to personalized pricing. AB 446 would prohibit this practice, while exempting transparent discounts that are broadly available. We urge an ‘aye’ vote.

What AB 446 does

AB 446 prohibits the use of a consumer’s personal data gathered by electronic surveillance technology to set a customized price. This includes, for example, data about a consumer’s race or weight, their parenthood status, their genetic information, the geometry of their face, their political affiliations, and their web-browsing history. AB 446 also prohibits the secret and automated use of personal data to target groups of individuals with prices. This is important because the fine-grained data that companies possess about consumers enables them to place individuals into highly specific groups, such as “mothers of toddlers without higher education earning less than \$75k” or “diabetic male over 35 earning more than \$150k.”

AB 446 also has several reasonable exemptions. If a company offers different prices to different people based on differences in the cost of providing a good or service—like higher prices in regions with higher labor costs—that practice is not prohibited. The bill also does not apply to

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

discounts that are offered transparently, and that customers can access equally if they meet the clearly disclosed criteria. More specifically, the bill makes clear that the following categories of discounts are not surveillance prices:

- Discounts that are offered based on publicly disclosed criteria and that are offered uniformly to all consumers who meet the criteria are allowed under AB 446. For example, if a store offered a free box of pancake mix for every 10 boxes of mix a customer buys, and that discount is conspicuously disclosed, and anyone who buys 10 boxes of mix can get the 11th box free, that practice is not surveillance pricing. Similarly, if an insurance company offers a multipolicy discount to customers with more than one insurance policy with the company, and that discount is conspicuously disclosed and is available to anyone with more than one insurance policy with the company, that practice is not surveillance pricing. Discounts offered based on undisclosed criteria, such as the company's inference that a consumer is pregnant, are not permitted.
- Discounts that are offered to members of a broadly defined group, such as teachers or veterans, are exempt so long as the terms of the discount are conspicuously disclosed and the discount is provided uniformly to all consumers who are members of the group. For example, senior discounts would be permitted, but discounts that microtarget specific seniors based on inferences about their health conditions or wealth would not. Similarly, Disneyland's SoCal Resident Ticket Offer would be permitted so long as the terms of the discount are conspicuously disclosed and the discount is provided uniformly to all Southern California residents who meet the zip code eligibility requirement.
- Discounts that are offered through a loyalty or reward program are exempt so long as 1) the consumer affirmatively enrolls in the program, 2) the eligibility for discounts offered through the program are conspicuously disclosed, and 3) the discount is applied uniformly to all consumers who meet the eligibility requirements. This, for example, would exempt frequent flyer programs that offer benefits after customers have flown 20,000 miles, so long as the program conspicuously discloses that benefits kick in after 20,000 miles, and anyone in the program who flies 20,000 miles can access the benefits.

Additionally, insurers complying with the insurance code and companies that deny credit or do not transact with a consumer based on information contained in a consumer report covered by the Fair Credit Reporting Act—such as credit checks for potential renters—are exempt.

What is surveillance pricing?

Not long ago, before the rise of online shopping and mass data collection, consumers could shop anonymously, confident that the price tag they saw on the shelf wasn't influenced by the store's knowledge of their family, shopping habits, online browsing, ability to pay, or any particular situation that could increase their urgency to purchase. That is no longer the case.

Companies can gather data on consumers' purchase histories, speed of click through, history of clicks, search history, 'likes' on social media, geolocation, IP address, device type, and more, to create a detailed portrait of a consumer. They can use artificial intelligence to make detailed inferences about consumers based on this data. These detailed profiles, combined with technology that enables companies to display different prices to different consumers online—or send discounts on an individualized basis—means that companies have all the tools they need to implement surveillance pricing. Surveillance pricing is not just about offering discounts; it also allows businesses to know when a consumer might be desperate enough to tolerate a higher price or when a loyal customer will keep coming back even in the absence of discounts.

Surveillance pricing can be difficult to detect because consumers rarely have a view into what information a company has about them, what the prices they see are based on, or what prices other customers may be seeing for the same product at the same store. Still, enterprising journalists have discovered examples:

- An investigative journalist writing for SFGate looked at the prices offered for a hotel room in Manhattan for a specific date, and varied his operating system, browser, cookies, and location (his computer's IP address).² He found that when he changed his IP address from a Bay Area location to locations in Phoenix and Kansas City, the prices dropped by more than \$200 per night in one instance, and more than \$511 in another instance.
- ProPublica found that test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer's zip code, which can be a proxy for race in many parts of the country.³ The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.
- The Wall Street Journal reported that Orbitz, the travel aggregation company, determined that Mac users spent more per night on hotels than Windows users, and began steering Mac users towards pricier hotels.⁴
- A Minnesota local news site discovered that Target changed the prices displayed on its app for certain products based on whether the customer—and their device—was physically inside a Target store. When the reporters looked at the Target app while inside a store, they found that a Graco car seat was \$72 more expensive than when they had been sitting on the far side of the Target parking lot, and a Dyson vacuum was \$148 more expensive.⁵

² Keith A. Spencer, "Hotel booking sites show higher prices to travelers from Bay Area," *SFGate*, Feb. 3, 2025. <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>

³ Julia Angwin, Surya Mattu and Jeff Larson, "The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review," *ProPublica*, Sept. 1, 2015 <https://www.propublica.org/article/asians-nearly-twice-as-likely-to-get-higher-price-from-princeton-review>

⁴ Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012 <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁵ Chris Hrapsky, "The Target app price switch: What you need to know" *Kare 11*, Jan. 27, 2019 <https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>

Consumers are opposed to personalized pricing

To get a sense for how consumers feel about personalized pricing, Consumer Reports has conducted a series of nationally representative surveys on the subject. One, administered in May of 2024 to a sample of 2,022 US adults, found that 66% of Americans were opposed to the practice of online retailers selling the same goods and services at different prices depending on the buyer's personal information.⁶

We also asked consumers about specific practices for offering tailored discounts within loyalty programs. "Discounts" for some are, of course, the same as price increases for everyone else, but the framing of a "discount" may be more palatable to many consumers. Still, we found high levels of opposition to particular discounting practices within loyalty programs in another of CR's nationally representative surveys, this one of 2,209 US adults in January of 2025.⁷

- 76% of Americans opposed companies offering discounts through their loyalty programs based in part on demographics such as age, income, race/ethnicity, where a person lives, and more. The examples of surveillance pricing at Target, Princeton Review, and hotels mentioned above appear to be examples of location-based surveillance pricing.
- 73% of Americans opposed giving deeper discounts to newer or less active members of loyalty programs than members in the loyalty program who have shopped at that retailer consistently over time.
- 72% of Americans oppose basing discounts in part on online presence or behavior, such as the kind of devices or browsers they use, search history, past purchases, and more. The Orbitz example appears to be an example of surveillance pricing based on type of device.

Surveillance pricing can hurt consumers by surreptitiously offering different prices based on a protected status, such as race or gender. It can also hurt consumers by pushing them to pay the most they are individually willing to pay, or by taking advantage of them in moments of desperation, when their willingness to pay increases. One hypothetical example offered by former chair of the Federal Trade Commission, Lina Kahn, is airlines charging an individual more for a plane ticket if the airline infers there was a death in the family and the consumer needs to attend a funeral.⁸

⁶ Consumer Reports Survey Group, "A.I./Algorithmic Decision-Making: Consumer Reports Nationally Representative Phone and Internet Survey, May 2024," report prepared July 9, 2024 <https://advocacy.consumerreports.org/wp-content/uploads/2024/07/CR-AES-AI-Algorithms-Report-7.25.24.pdf>

⁷ Consumer Reports Survey Group, "American Experience Survey: A Nationally Representative Multi-Mode Survey January 2025 Omnibus Results" January, 2025 https://article.images.consumerreports.org/image/upload/v1738949712/prod/content/dam/surveys/Consumer_Report_s_AES_January_2025.pdf

⁸ Jaures Yip, "FTC chair Lina Khan warns that airlines might one day use AI to find out you're attending a funeral and charge more," *Business Insider*, September 23, 2024 <https://www.businessinsider.com/ftc-chair-lina-khan-warns-ai-pricing-discrimination-risks-2024-9>

There's another downside for consumers beyond potentially paying higher prices. Personalized pricing, especially personalized discounts that are offered through membership programs or are contingent on the use of certain mobile apps, can make the experience of trying to discover a product's price and compare across vendors much more time intensive and frustrating.

We asked our members about their experiences with unpredictable prices; discovering they were offered a different price than someone else; or seeing different prices when they shopped on different web browsers, or when they shopped online versus in person. We received an outpouring of comments from frustrated members, including the following anecdotes.

- “When I purchase airline tickets, I do all my comparison shopping to choose the best flight. Then, I clear my browser history and check again. Often the price is lower then! It is as if the more you look at a flight, the more the price increases because companies know you want it.” – member from Washington
- “Sometimes, when I’ve logged into Amazon.com as a guest and then returned to the site and logged in with my Amazon account, the price of an item will have increased by a few dollars within the span of a few minutes. I’ve often wondered if this is because of my purchasing profile, my credit rating or my ability to pay a higher price. If so, that doesn’t seem right. The increase in cost is usually by only a few dollars. Of course, by coincidence, Amazon could have raised the price for everyone at the same time, within the span of a few minutes. This, however, has happened to me several times, which makes me wonder if instead some computer algorithm might be behind these changes in price. Seems a lot like consumer profiling.” – member from Virginia
- “There’s a small Target store near me....Anyway, you get better prices if you use the app and pick up (or have them bring it to your car in the special parking spaces) the goods rather than buying them in the store. This is a casual observation and I can only think specifically of a CamelBak water bottle that was under \$20 in the app and closer to \$30 grabbing it off the shelf in the store.” – member in Colorado
- “I was shopping for a name-brand electric razor—at first, I checked the price and it included a substantial discount coupon. I then checked a more expensive, newer model from the same manufacturer. I was interrupted and had to return and reload the page a few minutes later. Suddenly, the original product was a higher price without the digital coupon offered earlier. It was very odd—it almost seemed like because I considered the higher-end model, Amazon calculated that I'd be willing to buy the mid-range product without the discount.” – member from Missouri
- “I have also noticed that when I use a VPN, the prices for flight tickets can drop substantially depending upon my geographic location. There are also flight price variations using certain apps as opposed to using the company’s website.” – member from Texas

Often, our members can't know for sure if they are experiencing surveillance pricing or dynamic pricing—where the price for everyone changes quickly—or other pricing tactics. What they do know is that it is increasingly difficult to try to find the best price for a product. AB 446 would help address this frustration. Consumer Reports respectfully encourages an 'aye' vote.

Sincerely,

Grace Gedy
Policy Analyst
Consumer Reports

CC: Honorable Chris Ward